whereby money is distributed by chance, although I think it would be far better if witnesses who give expert evidence of this would have regard to the wording of the definition of "Lottery" in section 2 of the Ordinance. But the evidence in this case appears to me to give more information upon this crucial point than was the case in *Lee Seow Kuan v. Rex*[1].

Upon the second point that the evidence of the confession ought not to have been admitted there does not seem to have been any evidence that the accused was in custody at the time he is alleged to have made it to a police officer who was not below the rank of Inspector. Therefore I do not think that it was inadmissible. But the manner in which it came out from an officer with the experience of Inspector Suppiah in answer to a question by an undefended man was unsatisfactory. He was asked the question whose room is this? He elects to give a reply about something which the accused had told him. He did not confine himself to answering the question, and introduced a matter which he was not being asked about.

Thirdly upon the question of the insufficiency of evidence, the learned Magistrate convicted on two grounds :—

(1) The evidence that cash and documents were lying on the table at which the appellant was sitting;

(2) The Inspector's answer to the question: "Whose room is this?"

As to the first the evidence shews that No. 2 accused, who was admittedly the man who was the 'collector', was also sitting at that table. Therefore this ground amounts to nothing. There remains only the Inspector's unsatisfactory answer to the question. I do not consider that this conviction can be sustained on that. The appeal is allowed.

Appeal Allowed.

SOH PENG THIAM & ORS. v. REX.

[App. Crim. Juris. (Brown, J.) November 27, 1947]
[Singapore — Magistrate's Appeal No. 94 of 1947]

Evidence Ordinance, S. 25 — Confession to a Police Officer — Whether statement amounts to confession — Inadmissibility of evidence — No failure of justice — Evidence Ordinance, s. 168 — Criminal Procedure Code, s. 448·(e).

In this case a police witness in giving evidence said that he asked the persons on board a sampan where they got the sugar from. He then went on to say "I was told in reply that the sugar on board the motor-sampan was purchased from the lighter".

Held, (1) that as this statement led to the inference that the appellants were guilty of the offence for which they were charged, it amounted to a confession and ought to have been excluded; (2) that as the statement did not operate on the Magistrate's mind and there was other independent evidence against the appellants, the improper admission of the statement did not occasion a failure of justice.

Case referred to :—

(1) *Sambu v. Rex* (1947) M.L.J. 16.

MAGISTRATE'S APPEAL.

R. H. Green for the Appellants.

Lim Koon Teck (D. P. P.) for the Respondent.

Brown, J. : — The substantial ground in this appeal is that the Magistrate admitted two pieces of evidence which, it is said, were inadmissible as being confessions made to a police officer below the rank of Inspector and therefore contravened section 25 of the Evidence Ordinance. The first piece of evidence appears at page 2 of the Record in the cross-examination of the first police witness, who said that he asked the persons on board the sampan where they got the sugar from. He then went on to say :—

> I was told in reply that the sugar on board the motor sampan was purchased from the lighter.

The second piece of evidence, to which objection is taken, appears on page 8 of the Record in cross-examination of the 11th police witness. He said :—

> I asked Taikong why sugar unloaded at night time. Taikong said — as I am in trouble. I wish to sell the sugar.

Dealing first with this piece of evidence on page 8, there were six accused persons in this case, of whom Accused 4, 5 and 6 are the 1st, 2nd and 3rd appellants respectively. The first appellant was the owner of the motor-sampan, and the 2nd and 3rd appellants were coolies employed by him. The Taikong, whose statement is referred to by the 11th witness was the Taikong of the lighter. He was the 1st Accused at the trial and is not an appellant. That would appear to dispose of this objection.

With regard to the first piece of evidence (on page 2) the question is whether it amounts to a confession. And the following passage from page 226 of the 9th Edition of *Woodroffe and Ameer Ali's* Law of Evidence is directly in point :—

> A confession is an admission made at any time by a person charged with a crime stating, or suggesting the inference, that he committed the crime. Therefore not only statements which amount to a direct acknowledgment of guilt are confessions, but also inculpatory statements, which, although they fall short of actual admissions of guilt yet suggest an inference of guilt. Ali inculpatory statements, however, are not "confessions", but only such as fall short of being an admission of guilt, and from which an inference of guilt follows. A statement

which is intended by the maker to be self-exculpatory may be nevertheless an admission of an incriminating circumstance; the factor determining whether a statement amounts to a confession or not being not the motive of the party making it, but the fact that it leads to an inference of guilt.

The question therefore is whether the statement leads to an inference of guilt.

All the appellants were charged with aiding and abetting the first three accused in committing criminal breach of trust. When the Police stopped the sampan only the appellants were on board, and it was they (one of them being the owner) who said, in answer to a question, that the sugar was purchased from the lighter. As the first accused, whom the appellants were charged with aiding and abetting, was the Taikong of the lighter and, according to his own evidence, was responsible for all the cargo, the admission that the sugar was purchased from the lighter seems to me to lead to the inference that it was purchased from the man who was responsible for it and to whose custody it had been entrusted. It therefore leads to the inference that the appellants were guilty of the offence with which they were charged, and as such it ought to have been excluded, even though it was elicited in reply to a question put by the appellants' counsel.

But I do not think that that necessarily concludes the matter in view of the provisions of section 448 (e) of the Criminal Procedure Code and section 168 of the Evidence Ordinance. And in this connexion I must refer to my own consideration of those sections in the Magistrate's Appeal of *Sambu v. Rex*[1] and particularly to the distinction between section 448 (e) of our Criminal Procedure Code and its counterpart in the Indian Code of Criminal Procedure. And, as in the case of *Sambu v. Rex*[1] so in this case it seems to me that unless I am to ignore the specific provisions of our law, having found that this statement ought to have been excluded, I must go on to consider whether its improper admission has occasioned a failure of justice. In considering this question the fact that the statement was elicited, not merely without any objection being made by the appellants' counsel as in *Sambu v. Rex*[1], but actually in answer to a question put by the appellants' counsel, is material. Nevertheless, in spite of that fact, this Court ought not to act upon those sections unless, having regard to the evidence given at the trial and assuming that the objectionable statement had not been admitted, it is clear that the Magistrate must inevitably have arrived at the same conclusion.

The Magistrate, in a careful Judgment, sets out in paragraph 4 the salient points in the evidence which caused him to arrive at his conclusion. One of the points is that although the defence at the trial was that the bags of sugar were in process of being moved back to the lighter after having been removed to the sampan in order that a leak in the lighter might be repaired, quite a different explanation was given to the Police when they appeared on the scene. It is clear from para. 4 (c) of the Judgment that that was the point which operated on the Magistrate's mind. It was not the point that the appellants had confessed to the crime. There is nothing in the Judgment or in the Record to indicate that the Magistrate or the appellants' counsel appreciated that the statement that the sugar was purchased from the lighter amounted to a confession, and indeed there has been a good deal of argument in this Court as to the significance of that statement. The point made by the Magistrate in paragraph 4 (c) is that the story given to the Police was entirely different to the story told in Court; and if the statement had not been in the nature of a confession it would have been admissible because the Police were not at that time conducting an investigation under Chapter XIII of Part V of the Criminal Procedure Code and therefore the statement was not rendered inadmissible by virtue of section 124 of the Criminal Procedure Code.

Acting in accordance with section 448 (e) of the Criminal Procedure Code I hold that the improper admission of this statement did not occasion a failure of justice for the following reasons :—

(a) It was elicited in cross-examination in answer to a question put by the appellants' counsel and without objection made by him;

(b) The Judgment shews that it did not operate upon the Magistrate's mind as a confession, and the significance which he attached to it was quite different and was legitimate;

(c) The other factors in the evidence, which he has fully set out in his Judgment, are of such weight that in my view if the inadmissible piece of evidence had been excluded he must inevitably have come to the same conclusion.

The appeal is dismissed.

Appeal Dismissed.